

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

CHARLES RUSSELL RHINES, Petitioner, vs. DARIN YOUNG, Warden, South Dakota State Penitentiary Respondent.	CIV. 00-5020-KES ORDER ISSUING CERTIFICATE OF APPEALABILITY DENYING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL
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Petitioner, Charles Russell Rhines, moves for a certificate of appealability. Docket 361. Rhines may not appeal the denial of his motion under 28 U.S.C. § 2255 unless he receives a certificate of appealability. 28 U.S.C. § 2253(c)(1). Rhines must make “a substantial showing of the denial of a constitutional right” to receive a certificate of appealability. *Id.* § 2253(c)(2). “A substantial showing is a showing that issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings.” *Bell v. Norris*, 586 F.3d 624, 632 n. 3 (8th Cir. 2009) (citing *Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997)).

The court finds that Rhines has made “a substantial showing of the denial of a constitutional right” concerning the following issues:

1. Violation of *Miranda* Rights By Admission of Statements
2. Violation of Sixth and Fourteenth Amendments by Improper Exclusion of Two Jurors for Cause
3. The Admission of Victim Impact Evidence Violated the Ex Post Facto

and Due Process Clauses of the Constitution

4. The Presence of an Unconstitutionally Vague Aggravator Violated Rhines's Eighth and Fourteenth Amendment Rights
5. South Dakota's Capital Punishment Statute is Unconstitutional
6. The Penalty-Phase Instructions Violated Rhines's Rights to Due Process and a Fair Trial
7. Insufficient Evidence Supported the Jury's Finding of Two Statutory Aggravating Circumstances
8. Rhines's Counsel Rendered Ineffective Assistance
9. The Prosecutor Engaged in Misconduct
10. Procedural Rulings Concerning Standard of Review, Denial of Abeyance, Determination that *Martinez v. Ryan* Does Not Apply, and Denial of Rule 59 Motion

A certificate of appealability is granted as to these issues.

Rhines also moves for leave to proceed in forma pauperis on appeal. Docket 358. "A party who was permitted to proceed in forma pauperis in the district court action . . . may proceed on appeal in forma pauperis without further authorization[.]" Fed. R. App. P. 24(a)(3). On March 3, 2000, this court granted Rhines' motion to proceed in forma pauperis. Docket 9. Therefore, he may proceed in forma pauperis on appeal without authorization.

Accordingly, it is ORDERED

1. Rhines's certificate of appealability (Docket 361) is granted as to the issues listed above.

2. Rhines's motion for leave to proceed in forma pauperis (Docket 358) is denied as moot.

Dated August 11, 2016.

BY THE COURT:

/s/ *Karen E. Schreier*

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE